

AMENDED IN SENATE MAY 11, 2011
AMENDED IN SENATE APRIL 25, 2011
AMENDED IN SENATE MARCH 24, 2011

SENATE BILL

No. 921

Introduced by ~~Senator Lieu~~ *Senators Lieu and Correa*

February 18, 2011

An act to add Article 2.5 (commencing with Section 150) to Chapter 2 of Part 1 of Division 2 of the Military and Veterans Code, relating to the Military Department, *and declaring the urgency thereof, to take effect immediately.*

LEGISLATIVE COUNSEL'S DIGEST

SB 921, as amended, Lieu. Military Department: Office of the Inspector General.

Existing law establishes in state government the Military Department, which includes the office of the Adjutant General, the State Military Reserve, the California Cadet Corp, and the Naval Militia. ~~Existing law establishes various duties for these officers and entities~~ *There is also, within the Military Department, the Office of the State Military Department Inspector General. The State Military Department Inspector General inspects, audits, investigates, trains, and performs various duties necessary to support the mission of the Military Department.*

~~This bill would establish the Office of the Inspector General within the Military Department~~ *require the State Military Department Inspector General to be independent of the chain of command of the Military Department.* This bill would require the Governor to appoint the inspector general, subject to Senate confirmation, ~~and would specify that the inspector general is independent of the chain of command of~~

~~the Military Department and serves at the discretion of the Governor. This bill would require the inspector general to investigate complaints and allegations of wrongdoing by military personnel, as specified~~ *specify the duties of the State Military Department Inspector General*, and would require the inspector general to establish a toll-free public telephone number to receive these complaints and allegations. This bill would also require that disciplinary action be brought against a state officer or employee who intentionally retaliates against a person who made a complaint or allegation of wrongdoing to the ~~inspector general~~ *State Military Department Inspector General*, as provided, and would specify that these officers and employees may be liable for civil damages for these same actions.

The California Constitution requires that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: ~~majority~~^{2/3}. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Article 2.5 (commencing with Section 150) is
2 added to Chapter 2 of Part 1 of Division 2 of the Military and
3 Veterans Code, to read:

4
5 Article 2.5. ~~Office of the Inspector General for the Military~~
6 ~~Department~~ *State Military Department Inspector General*
7

8 150. For purposes of this article, the following terms have the
9 following meanings:

10 (a) "Department" means the Military Department.

11 (b) "Office" means the Office of the ~~Inspector General within~~
12 ~~the Military Department~~ *State Military Department Inspector*
13 *General*.

14 (c) "Inspector general" means the ~~Inspector General for the~~
15 ~~Military Department~~ *State Military Department Inspector General*.

1 ~~150.10. (a) There is hereby created in the Military Department~~
2 ~~the Office of the Inspector General.~~

3 ~~(b) The department shall, from the amount annually appropriated~~
4 ~~to it for purposes of this office, fund the position of inspector~~
5 ~~general and provide the office space and support personnel~~
6 ~~requested by the inspector general.~~

7 ~~(c) The inspector general shall have access to all employees and~~
8 ~~documents of the department.~~

9 ~~150.11. (a) The inspector general shall meet the same~~
10 ~~qualifications established in this code for the Adjutant General.~~

11 ~~(b) The inspector general is independent of the chain of~~
12 ~~command of the Military Department.~~

13 ~~(c) (1) The Governor shall appoint the inspector general, subject~~
14 ~~to confirmation by the Senate.~~

15 ~~(2) Upon confirmation by the Senate, the inspector general shall~~
16 ~~serve at the discretion of the Governor.~~

17 ~~(3) The inspector general shall serve on state active duty at the~~
18 ~~grade of O-6.~~

19 ~~150.10. (a) The inspector general shall be independent of the~~
20 ~~chain of command of the Military Department.~~

21 ~~(b) The inspector general shall meet the same qualifications~~
22 ~~established in this code for the Adjutant General.~~

23 ~~(c) (1) The Governor shall appoint the inspector general,~~
24 ~~subject to confirmation by the Senate.~~

25 ~~(2) Upon confirmation by the Senate, the inspector general shall~~
26 ~~serve at the discretion of the Governor.~~

27 ~~(3) The inspector general shall serve on state active duty at the~~
28 ~~grade of O-6.~~

29 ~~150.11. (a) The department shall, from the amount annually~~
30 ~~appropriated to it for purposes of this office, fund the position of~~
31 ~~inspector general and provide the office space and support~~
32 ~~personnel requested by the inspector general.~~

33 ~~(b) The inspector general shall have access to all employees~~
34 ~~and documents of the department.~~

35 ~~150.12. (a) The inspector general may receive communications~~
36 ~~from any person, including, but not limited to, any member of the~~
37 ~~California National Guard, the State Military Reserve, and the~~
38 ~~Naval Militia.~~

39 ~~(b) The inspector general shall establish a toll-free public~~
40 ~~telephone number to receive the complaints and allegations~~

described in subdivision (a) of Section 150.13. The inspector general shall post this telephone number in clear view at every California National Guard armory, flight facility, airfield, or installation.

150.13. (a) At the discretion of the inspector general or, upon a written request by the Governor, a member of the California Legislature, the Adjutant General, or any member of the public, the inspector general shall investigate any of the following:

(1) Complaints that the Adjutant General or the Assistant Adjutant General has engaged in discrimination or retaliation for whistleblowing.

(2) Allegations of misconduct by the Adjutant General or the Assistant Adjutant General.

(3) Allegations of misconduct by any member of the California National Guard.

(b) If the inspector general conducts an investigation at the request of a member of the California Legislature, the inspector general shall submit to that member a report of his or her findings of that investigation.

(c) (1) A request described in subdivision (a) is not a public record and is not subject to disclosure under the California Public Records Act set forth in Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code.

(2) Notwithstanding paragraph (1), the inspector general may, at his or her discretion, disclose to the Governor, a member of the California Legislature, or to a law enforcement agency the identity of a person making a written request or an allegation or complaint described in subdivision (a). The inspector general shall not disclose to any other person or entity the identity of a person making a written request or an allegation or complaint described in subdivision (a), unless the person making the request, allegation, or complaint has consented to the disclosure in writing.

(d) When deemed appropriate by the inspector general, the inspector general shall refer to the federal Inspector General of the Department of Defense any complaints and allegations pertaining to violations of federal military laws or regulations.

150.14. (a) Any state officer or employee who intentionally engages in acts of reprisal, retaliation, threats, coercion, or similar acts against an employee of any state department, board, or authority for having disclosed what the employee, in good faith,

1 believed to be a complaint or allegation described in subdivision
2 (a) of Section 150.13 shall be disciplined by adverse action as
3 provided in subdivision (a) of Section 19574 of the Government
4 Code. If no adverse action is instituted by the appointing power,
5 the State Personnel Board shall take adverse action against the
6 officer or employee in the same manner as provided in Section
7 19583.5 of the Government Code.

8 (b) In addition to all other causes of action, penalties, or other
9 remedies provided by law, any state officer or employee who
10 intentionally engages in acts of reprisal, retaliation, threats,
11 coercion, or similar acts against an employee for having disclosed
12 what the employee, in good faith, believed to be a complaint or
13 allegation described in subdivision (a) of Section 150.13 shall be
14 liable in an action for damages brought against him or her by the
15 injured party. Punitive damages may be awarded by the court if
16 the acts of the offending party are proven to be malicious. If
17 liability has been established, the injured party also shall be entitled
18 to reasonable attorney's fees as provided by law.

19 (c) For purposes of this section "state officer" includes, but is
20 not limited to, a member of the Military Department on state active
21 duty and any officer who holds a state commission or appointment
22 by the Governor.

23 *SEC. 2. The Legislature finds and declares that Section 1 of*
24 *this act, which adds Section 150.13 to the Military and Veterans*
25 *Code, imposes a limitation on the public's right of access to the*
26 *meetings of public bodies or the writings of public officials and*
27 *agencies within the meaning of Section 3 of Article I of the*
28 *California Constitution. Pursuant to that constitutional provision,*
29 *the Legislature makes the following findings to demonstrate the*
30 *interest protected by this limitation and the need for protecting*
31 *that interest:*

32 *In order to protect the confidentiality of those persons making*
33 *complaints or allegations, as authorized by this act, from any form*
34 *of retaliation for having made the complaint or allegation, it is in*
35 *the state's interest to limit public access to information.*

36 *SEC. 3. This act is an urgency statute necessary for the*
37 *immediate preservation of the public peace, health, or safety within*
38 *the meaning of Article IV of the Constitution and shall go into*
39 *immediate effect. The facts constituting the necessity are:*

1 *In order to ensure that Military Department personnel who are*
2 *employed in State active duty, and thus are not under federal*
3 *military oversight, as well as those subject to the control of these*
4 *personnel, receive due process in the consideration of complaints*
5 *and appeals of disciplinary actions.*

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